REMARKS

The Non-Final Office Action mailed February 3, 2009 has been received and carefully noted. Claims 1, 2, 4-8, 10-29, 31-35, and 37-43 are currently pending in the subject application and are presently under consideration. The Examiner states that no claims were amended in the previously submitted Response to Final Office Action mailed October 21, 2008 (*See* Office Action mailed February 3, 2009, pg. 2). However, the Applicants respectfully note that claim 43 was amended to correct a minor informality. The Applicants request that the Examiner confirm that this amendment was entered.

No claims have been amended, added, or cancelled in this Response. A listing of claims can be found on pages 2-11.

Favorable reconsideration of the pending claims is respectfully requested in view of the following comments.

I.   Rejection of Claims 1 and 28 Under 35 U.S.C. § 102(e)

Claims 1 and 28 are rejected under 35 U.S.C. § 102(e) as being anticipated by Bishop *et al.* (U.S. 6,983,317) ("Bishop"). It is respectfully requested that these rejections be withdrawn for at least the following reason. Bishop does not describe each and every element of the claims.

> For a prior art reference to anticipate, 35 U.S.C. §102 requires that "each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference."

In re Robertson, 169 F.3d 743, 745, 49 USPQ2d 1949, 1950 (Fed. Cir. 1999) (*quoting Verdegaal Bros., Inc. v. Union Oil Co.*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987)). In particular, independent claims 1 and 28 recite "clearing the first set of data by the second network process if a time period expires, the time period *beginning* upon *receiving* the notification of death" (emphasis added).

The Examiner states that Bishop discloses these aspects in col. 101, ll. 52-58, col. 103, ll. 10-23, col. 104, ll. 62-66, and col. 130, ll. 59-61. The Examiner states that these

passages indicate that a "heartbeat period reaches timeout and eviction period upon notification of death expires [*sic*] and engine monitoring manager removes [*sic*] the engine from its list" (*See* Office Action mailed February 3, 2009, pg. 3).

Based on the Examiner's above statement, the Applicants are unclear as to whether Examiner equates the heartbeat period or the eviction period of Bishop with the recited "time period beginning upon receiving the notification of death" of the claims. Nevertheless, neither the heartbeat period nor the eviction period of Bishop discloses the recited "time period beginning upon receiving the notification of death" for the following reasons.

Bishop's heartbeat period is not a time period that **begins** upon **receiving** a notification of death of the first network process. Bishop discloses that a "heartbeat is a message that is sent to all available engines to inform them of its existence (*See* Bishop, col. 102, ll. 24 and 25). One example or default value of a "polling interval" that serves as the "[i]nterval between [h]eartbeats" is every 5 seconds (*See Id.* at col. 102, ll. 7 and 8). The cited reference does not indicate that a heartbeat interval would **begin** upon **receiving** a notification of death of the first network process. Rather, the heartbeat period in the example or default value of Bishop begins 5 seconds after the previous heartbeat. The heartbeat interval is a repetitive occurrence unrelated to any receipt of a notification of death of the first network process.

Bishop's eviction period is also not a time period that **begins** upon **receiving** a notification of death of the first network process. The eviction period is a period of time in which the engine monitoring manager has not received a heartbeat, *e.g.*, 15 minutes (*See* Bishop, col. 104, ll. 6-9). In this example, the eviction period represents a time period of at least 15 minutes **since the last heartbeat** of the engine. Bishop does not establish any relation between the receipt of a notification of death and the **beginning** of the eviction time period.

In addition, independent claims 1 and 28 recite "synchronizing by the second network process the first set of data with a second set of data if the time period does not expire, the second set of data received from the first network process after the first network process *restarts*" (emphasis added). The Examiner asserts that col. 52, ll. 27-61, col. 102, ll. 46-53, col. 103, ll. 25-62, and col. 104, line 62 – col. 105, line 17 of Bishop disclose these aspects. The Examiner states that these passages disclose "if the eviction time period does not expire, the data from the engine is merged and updated with the

engine monitoring manager" (*See* Office Action mailed February 3, 2009, pg. 3). The Applicants have reviewed these passages and considered the Examiner's statement and do not discern which part discloses the limitation "....after the first network process *restarts*" (emphasis added). If the Examiner maintains these rejections, the Applicants respectfully request that the Examiner specify which part of Bishop discloses the restarting of the first network process.

In view of the above, Bishop does not describe each and every element of independent claims 1 and 28. Accordingly, it is respectfully requested that these rejections be withdrawn.

II.   Rejection of Claims 2, 4-8, 10, 11, 16-27, 29, 31-35, and 37-43 Under 35 U.S.C. § 103(a)

Claims 2, 4-8, 10, 11, 16-27, 29, 31-35, and 37-43 are rejected under 35 U.S.C. § 103(a) as being obvious over Fuchs *et al.* (U.S. 5,440,726) ("Fuchs"), in view of Bishop. Independent claims 7, 16, 20, 24, 34, 39, and 43 recite limitations analogous to those discussed above regarding the time period (*See e.g.,* independent claim 7, "the time period beginning upon receiving by the second network process a notification of death of the first network process"). The Examiner does not indicate and the Applicants do not discern any part of Fuchs that cures the aforementioned deficiencies of Bishop regarding these limitations. For the reasons of section I, the cited references do not teach or suggest all the limitations of independent claims 7, 16, 20, 24, 34, 39, and 43. Claims 2, 4-6, 8, 10, 11, 17-19, 21-23, 25-27, 29, 31-33, 35, 37, 38, and 40-42 depend from one of independent claims 7, 16, 20, 24, 34, and 39 and thus incorporate the respective limitations thereof. For at least the above reasons regarding the independent claims, the cited references fail to teach or suggest all the limitations of these dependent claims. Accordingly, the Applicants respectfully request withdrawal of these rejections.

III.   Rejection of Claims 12-15 Under 35 U.S.C. § 103(a)

Claims 12-15 are rejected under 35 U.S.C. § 103(a) as being obvious over Kidder *et al.* (U.S. 6,694,450) ("Kidder"), in view of Damani *et al.* (U.S. 5,938,775) ("Damani") and Bishop. Independent claim 12 recites limitations analogous to those discussed above

regarding the time period (*See e.g.*, "the time period beginning upon receiving a notification of death of the first network process"). The Examiner does not indicate and the Applicants do not discern any part of Kidder or Damani that cures the aforementioned deficiencies of Bishop regarding these limitations. For the reasons of section I, the cited references do not teach or suggest all the limitations of independent claim 12. Claims 13-15 depend from independent claim 12 and thus incorporate the limitations thereof. For at least the above reasons regarding independent claim 12, the cited references do not teach or suggest all the limitations of these dependent claims. Therefore, the Applicants respectfully request withdrawal of these rejections.
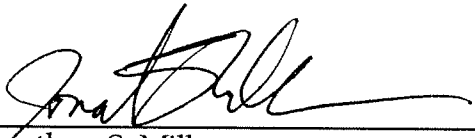
CONCLUSION

In view of the foregoing, it is believed that all claims now pending patentably define the subject invention over the prior art of record, and are in condition for allowance and such action is earnestly solicited at the earliest possible date. If the Examiner believes a telephone conference would be useful in moving the case forward, he is encouraged to contact the undersigned at (310) 207-3800.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 02-2666 for any additional fees required under 37 C.F.R. §§ 1.16 or 1.17, particularly extension of time fees.

Respectfully submitted,

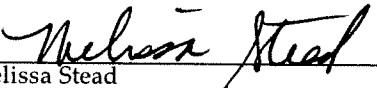BLAKELY SOKOLOFF TAYLOR & ZAFMAN LLP

Dated: __5/4/09__

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